

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B02

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Date:

June 13, 2008

Legend:

Fund =

State =

Country =

a =

b =

c =

d =

e =

Total Return =
Index

Excess Return =
Index

Total Return =
Sub-Index

Excess Return
Sub-Index =

Dear :

This responds to your request received December 20, 2007, and supplemental correspondence dated April 29, 2008, and May 30, 2008, submitted by your authorized representative on behalf of Fund. Fund requests that the Internal Revenue Service rule: 1) that income and gain arising from the commodities-linked notes described in this letter will constitute qualifying income to Fund under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the Code); and 2) that income earned from the ownership of a wholly-owned subsidiary that is a controlled foreign corporation (CFC) constitutes qualifying income to Fund under section 851(b)(2).

FACTS

Fund is organized as a State corporation and is registered as a closed-end investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). Fund will elect to be taxed as a regulated investment company (RIC) under Subchapter M of the Code.

Commodities-linked Notes

Fund intends to invest in commodities-linked notes having the terms and conditions of the following notes (the Notes): The first Note (Note 1) will be issued to Fund at a par value of \$a. Its payout formula will be determined with reference to a Total Return Index. Its term will be 14 months. Fund, as holder of Note 1, will have the right to put Note 1 to the issuer at the calculated redemption price based on the closing value of the referenced Total Return Index as of the end of the next day after notification to the issuer. In addition, if the referenced Total Return Index falls b percent from the beginning value of the Total Return index at the time of the acquisition of Note 1, Note 1 will “knockout” and be automatically redeemed based on a redemption price calculated using the closing value of the referenced Total Return Index on the next day.

The repayment obligation upon early redemption, knockout, or at maturity is calculated under a formula that provides for repayment of the face amount of Note 1, increased or decreased by an amount equal to the face amount of Note 1 multiplied by a leverage factor of c multiplied by the percentage of the increase or decrease of the beginning value of the referenced Total Return Index compared to the ending value of the Total Return Index for the applicable period. To this amount is added an amount that reflects interest on Note 1 at the Coupon Rate of d. From this amount is subtracted an annual fee amount of e basis points of the notional value (leveraged face amount) of Note 1. The redemption price formula under Note 1 will also include an adjustment for the reversal of the interest rate factor included in the total return computation.

The second Note (Note 2) will be issued to a Fund at par value of \$a. Its payout formula will be determined with reference to an Excess Return Index. Its term will be 14 months. Fund, as holder of the Note, will have the right to put Note 2 to the issuer at the calculated redemption price based on the closing value of the referenced Excess Return Index as of the end of the next day after notification to the issuer. In addition, if the referenced Excess Return Index falls b percent from the beginning value of the Excess Return Index at acquisition, Note 2 will “knockout” and be automatically redeemed based on a redemption price calculated using the closing value of the referenced Excess Return Index on the next day.

The repayment obligation upon early redemption, knockout, or at maturity is calculated under a formula that provides for repayment of the face amount of Note 2, increased or decreased by an amount equal to the face amount of Note 2 multiplied by a leverage factor of c multiplied by the percentage of the increase or decrease of the beginning value of the referenced Excess Return Index compared to the ending value of the Excess Return Index for the applicable period. To this amount is added an amount that reflects interest on Note 2 at the Coupon Rate of d. From this amount is subtracted an annual fee amount of e basis points of the notional value (leveraged face amount) of Note 2.

The third Note (Note 3) will be issued to Fund at par value of \$a. Its payout formula will be determined with reference to a Total Return Sub-Index. Its term will be fourteen months. Fund, as holder of Note 3, has the right to put Note 3 to the issuer at the calculated redemption price based on the closing value of the referenced Total Return Sub-Index as of the end of the next day after notification to the issuer. In addition, if the referenced Total Return Sub-Index falls b percent from the beginning value of the Total Return index at the time of the acquisition of Note 3, Note 3 will “knockout” and be automatically redeemed based on a redemption price calculated using the closing value of the referenced Total Return Sub-Index on the next day.

The repayment obligation upon early redemption, knockout, or at maturity is calculated under a formula that provides for repayment of the face amount of Note 3,

increased or decreased by an amount equal to the face amount of Note 3 multiplied by a leverage factor of c multiplied by the percentage of the increase or decrease of the beginning value of the referenced Total Return Sub-Index compared to the ending value of the Total Return Sub-Index for the applicable period. To this amount is added an amount that reflects interest on Note 3 at the Coupon Rate of d. From this amount is subtracted an annual fee amount of e basis points of the notional value (leveraged face amount) of Note 3. The redemption price formula under Note 3 will also include an adjustment for the reversal of the interest rate factor included in the total return computation.

The fourth Note (Note 4) will be issued to Fund at par value of \$a. Its payout formula will be determined with reference to an Excess Return Sub-Index. Its term will be fourteen months. Fund, as holder of Note 4, has the right to put Note 4 to the issuer at the calculated redemption price based on the closing value of the referenced Excess Return Sub-Index as of the end of the next day after notification to the issuer. In addition, if the referenced Excess Return Sub-Index falls b percent from the beginning value of the Excess Return Sub-Index at acquisition, Note 4 will “knockout” and be automatically redeemed based on a redemption price calculated using the closing value of the referenced Excess Return Sub-Index on the next day.

The repayment obligation upon early redemption, knockout, or at maturity is calculated under a formula that provides for repayment of the face amount of Note 4, increased or decreased by an amount equal to the face amount of Note 4 multiplied by a leverage factor of c multiplied by the percentage of the increase or decrease of the beginning value of the referenced Excess Return Sub-Index compared to the ending value of the Excess Return Sub-Index for the applicable period. To this amount is added an amount that reflects interest on Note 4 at the Coupon Rate of d. From this amount is subtracted an annual fee amount of e basis points of the notional value (leveraged face amount) of Note 4.

Fund makes the following representations with respect to these Notes:

(1) The issuer of the Notes will receive payment in full of the purchase price of the Notes substantially contemporaneously with the delivery of the Notes;

(2) Fund while holding the Notes will not be required to make any payment to the issuer of the Notes in addition to the purchase price paid for the Notes, whether as margin, settlement payment, or otherwise, during the life of the Notes or at maturity;

(3) The issuer of the Notes is not subject by the terms of the instrument to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (CEA); and

(4) The Notes are not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Controlled Foreign Corporation

Fund intends to form a wholly-owned foreign corporation subsidiary (Subsidiary). Subsidiary will be incorporated as an exempted limited company under the laws of Country. Under the laws of Country, an exempted limited company provides for limited liability for all holders of shares. A shareholder's liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Subsidiary will file an election on Form 8832 to be taxed as a corporation pursuant to §301.7701-3 of the Procedure and Administration regulations.

Fund represents that, although Subsidiary will not be registered as an investment company under the 1940 Act, Subsidiary will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to investments that would apply if the Subsidiary were registered under the 1940 Act.

Fund may invest a portion of its assets in the Subsidiary, subject to the diversification limitations set forth in section 851(b)(3) of the Code. Subsidiary will invest primarily in one or more of the following types of instruments: commodity and financial futures and options contracts (and fixed income securities that serve as collateral for these contracts); deliverable forward contracts; and cash settled nondeliverable forward contracts. Each of these contracts may be linked to the performance of one or multiple commodities (including a commodity index). Subsidiary may also invest in swaps on commodities or commodities indexes or in commodity-linked notes. Further, Subsidiary may also invest directly in commodities.

Subsidiary will be wholly owned by the Fund and, as such, Fund represents that the Subsidiary will be classified as a controlled foreign corporation. Fund will include its "Subpart F" income attributable to its subsidiary under the rules applicable to CFCs under the Code.

LAW AND ANALYSIS

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test (the "qualifying income requirement"). Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as—

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock

or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC's] business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as—

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge

for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

In addition, section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total voting power of a foreign corporation. Fund will own 100 percent of the voting power of the stock of Subsidiary. Fund is a United States person. Subsidiary therefore will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of this corporation and who owns stock in this corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the sum of the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952 of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Section 954(c)(1)(A) defines foreign personal holding company income to include dividends, interest, royalties, rents, and annuities.

Subsidiary's investments may generate foreign personal holding company income under section 954(c)(1)(A), which is subpart F income. Fund would therefore include in income the sum of the pro rata share of Subsidiary's subpart F income for the taxable year in accordance with section 951.

CONCLUSION

Based on the facts as represented, we rule that income and gain arising from the Notes constitutes qualifying income to Fund under section 851(b)(2) of the Code. We further rule that income derived by Fund from its investments in Subsidiary, whether or not attributable to subpart F income, is income derived with respect to Fund's business of investing in the stock of Subsidiary and thus constitutes qualifying income to Fund under section 851(b)(2).

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

Sincerely,

Susan Thompson Baker

Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)